

## Maine State Library Digital Maine

---

Workers' Compensation Board Documents

State Documents

---

5-21-1991

# Annual Report on the Status of the Maine Workers' Compensation System, 1991

Maine Workers' Compensation Board

Maine Bureau of Labor Standards

Maine Bureau of Insurance

Follow this and additional works at: [https://digitalmaine.com/wcb\\_docs](https://digitalmaine.com/wcb_docs)

---

### Recommended Citation

Maine Workers' Compensation Board, Maine Bureau of Labor Standards, and Maine Bureau of Insurance, "Annual Report on the Status of the Maine Workers' Compensation System, 1991" (1991). *Workers' Compensation Board Documents*. 54.  
[https://digitalmaine.com/wcb\\_docs/54](https://digitalmaine.com/wcb_docs/54)

This Text is brought to you for free and open access by the State Documents at Digital Maine. It has been accepted for inclusion in Workers' Compensation Board Documents by an authorized administrator of Digital Maine. For more information, please contact [statedocs@maine.gov](mailto:statedocs@maine.gov).

ANNUAL REPORT ON THE  
STATUS OF THE MAINE WORKERS'  
COMPENSATION SYSTEM

SUBMITTED TO THE 115TH  
LEGISLATURE

MAY 21, 1991

Joseph A. Edwards  
Superintendent  
Dept. of Professional  
& Financial Regulation  
Bur. of Insurance

James H. McGowan  
Director  
Dept. of Labor  
Bur. of Labor Standards

Ralph L. Tucker  
Chairman  
Workers'  
Compensation  
Commission

John R. McKernan, Jr  
Governor



Charles A. Morrison  
Commissioner  
James H. McGowan  
Director

**DEPARTMENT OF LABOR**  
Bureau of Labor Standards  
Research & Statistics Division

May 21, 1991

The Honorable John L. Martin  
Speaker of the House  
State House Station #2  
Augusta, ME 04333-0002

The Honorable Charles P. Pray  
President of the Senate  
State House Station #3  
Augusta, ME 04333-0003

Dear Speaker Martin and President Pray:

We are pleased to submit to the 115th Legislature the third Annual Report on the Status of the Maine Workers' Compensation System pursuant to Public Law 1987, Chapter 599. This document summarizes the results of data collection by the three agencies involved and is intended to present a profile of the workers' compensation system including costs, administration, adequacy, and an evaluation of the entire system.

Like its predecessor, this report is organized into three sections. The report itself, however, is a cooperative effort.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph A. Edwards".

Joseph A. Edwards  
Superintendent  
Dept. of Professional  
& Financial Regulation  
Bur. of Insurance

Sincerely,

A handwritten signature in dark ink, appearing to read "James H. McGowan".

James H. McGowan  
Director  
Dept. of Labor  
Bur. of Labor Standards

Sincerely,

A handwritten signature in dark ink, appearing to read "Ralph L. Tucker".

Ralph L. Tucker  
Chairman  
Workers'  
Compensation  
Commission

**REPORT ON THE 1990 MARKET FOR  
WORKERS' COMPENSATION INSURANCE**

**DEPARTMENT OF PROFESSIONAL AND  
FINANCIAL REGULATION**

**BUREAU OF INSURANCE**

## REPORT ON THE 1990 MARKET FOR WORKERS' COMPENSATION INSURANCE

Rates in the voluntary market and safety pool increased by an average of 4% on April 17, 1990. The increases varied by amounts ranging from a low of -9% to a high of 20%, applicable to new and renewed policies as of that date. In addition a 3% surcharge applied to policies effective July 1, 1990 to June 30, 1991 to partially fund the policy year 1988 residual market deficit.

In the one year period ending December 31, 1990 fourteen companies became self insured in the State. The self insureds now represent approximately one-third of the premium volume in the State.

While these figures are still subject to final audit, the preliminary report on calendar year 1989 shows the market coverage in the following percentages:

American Fidelity	24.4%
Hanover	23.0
Travelers	12.6
CU	12.3
Maine Bonding	9.8
Aetna	3.4
Hartford	2.7
Liberty	2.6
Fidelity & Casualty	2.0
U.S.F. & G.	1.9
ALL OTHER	5.3

The total premium volume on a calendar year basis for 1989 was about \$318 million. Estimated premium for policy year 1989 for the residual market is \$263 million.

Very preliminary and partial figures for the residual market for 1990 (only \$184 million) show the following percentages:

American Fidelity	23.0%
Hanover	21.8
Travelers	18.9
CU	17.1
Maine Bonding	9.5
Hartford	3.4
Fidelity & Casualty	2.6
U.S.F. & G.	2.5
Aetna	0.9
Hartford	0.3

As in 1989, most of the insureds are obtaining coverage through the residual market mechanism.

**OCCUPATIONAL INJURY AND ILLNESS  
STATISTICAL PROGRAMS AND  
WORKSITE SAFETY INITIATIVES**

**DEPARTMENT OF LABOR  
BUREAU OF LABOR STANDARDS**

## OCCUPATIONAL INJURY AND ILLNESS DATA SYSTEM

The Bureau of Labor Standards' affiliation with the Workers' Compensation Commission has been primarily in the area of statistics gathering and dissemination. Bureau staff does, however, assist other agencies and outside parties with data-set transfer and with data consultation. Additionally, a major role of the Bureau has been to try to reduce the number of injuries and illnesses in Maine through training and education and through on-site inspections and consultations. Workers' Compensation data provides important information as we attempt to target our efforts.

### Statistics Gathering and Dissemination

The two data collection and dissemination programs dealing with occupational injuries and illnesses are the Supplementary Data System (SDS) and the Annual Survey of Occupational Injuries and Illnesses (OSHA 200S). Each of the two programs is partially funded through the U.S. Department of Labor, Bureau of Labor Statistics. Two annual publications are produced: Characteristics of Work-Related Injuries and Illnesses in Maine and Occupational Injuries and Illnesses in Maine. Both are available, free of charge for single copies.

### Supplementary Data System

The Supplementary Data System (SDS) relies upon First Reports of Injury submitted to the Workers' Compensation Commission for use in coding detailed characteristics information for each claim. Coding of data elements (e.g. occupation, nature of injury, severity, etc.) is done directly onto the Workers' Compensation database via on-line capabilities. Each month a tape of claims information is created by the staff of Workers' Compensation Commission. Employees of the Bureau's Research & Statistics division write programs which use the claims tape to generate information to meet specific requests (e.g. the number of claims by occupation, industry, or company; the number of injuries and illnesses by severity, etc.). The data is public information and requests are filled as time permits. Our ability to handle requests for information is limited by the vacancy of a statistical programming position due to the state's budget problems.

Each year the Research and Statistics division publishes the Characteristics of Work-Related Injuries and Illnesses in Maine. Valuable information on detailed case characteristics of injured worker, of the firm, of the incident, and of fatalities occurring during the previous calendar year are contained in this publication.

Throughout the 1980's, the number of claims processed by the Research and Statistics division steadily increased. However, between 1988 and 1989, the number of claims increased by only 1 percent. Figures indicate that claims for 1990 may end up more than 8 percent below the number submitted for 1989.

### The Annual Survey of Occupational Injuries and Illnesses

Because Workers' Compensation laws vary significantly from state to state, it is inadvisable to compare statistics generated from our SDS program with similar data from the states. Furthermore, SDS data does not account for differences in the number of workers or the number of hours worked by employees. Consequently, rates for comparison purposes have not been generated using Workers' Compensation data.

The Annual Survey is based upon a stratified sample survey of Maine's private sector employers. Samples from each industry and within industry by size class are selected for participation. The sample is designed to be representative of the population of the state's employers. The survey asks employers for information on the company's injury and illness experience for the previous year. Recordable cases are based upon OSHA recordkeeping standards which differ from Workers' Compensation reporting requirements and are uniform throughout the United States. Its primary use is for OSHA to target occupational safety and health efforts and assess its progress. Data on the number of hours worked by all employees during the calendar year (exposure hours) are collected so incidence rates of the number of cases per 100 full-time workers may be calculated. A full-time worker is defined as one person working 50 weeks per year and 40 hours per week. Each year statistics generated from the survey data are presented in a publication entitled, Occupational Injuries and Illnesses in Maine.

Due to interest in OSHA recordkeeping, there were 12 recordkeeping presentations given last year by staff of the bureau. As of January 1, 1991, the responsibility for the recordkeeping requirements has been shifted from the U.S. Bureau of Labor Statistics to OSHA. A new set of requirements will be issued by OSHA for use in 1993. Additionally, public sector employers will be responsible for recordkeeping in the future. Plans are under way for substantial outreach to notify employers of the new requirements.



### Revised Occupational Safety and Health Statistical Programs

Beginning in 1992, the federal Bureau of Labor Statistics is expected to implement a revision to the Annual Survey of Occupational Injuries and Illnesses (OSHA 200S)--one that will combine collection of current information with collection of detailed case characteristics information for a sample of lost workday cases. The information will be used to calculate incidence rates on such things as nature of injury, part of body, occupation, etc.. Much of the coding necessary for case characteristics will be done by our SDS staff on the Workers' Compensation database. As it is for the current annual survey, partial funding for the revised survey will be provided by the United States Bureau of Labor Statistics. Consequently, the data will be subject to confidentiality and quality control requirements imposed by the federal Bureau of Labor Statistics.

### On-Site Training and Consultation

The Bureau of Labor Standards, Safety Division, offers safety consultation and training programs to businesses in the state. These services are free of charge. Specifically, safety and health inspectors will upon request conduct on-site inspections and provide a written report covering the problems discovered and suggest ways to correct them, conduct a pre-construction review of plans or specifications for potential safety and health problems, and offer assistance in correcting violations uncovered during an OSHA inspection. Additionally, many training classes are offered throughout the year on various safety and health topics. Since Maine is a Federal OSHA state, the Bureau of Labor Standards operates in a non-enforcement manner in attempt to foster safety awareness and voluntary compliance to safety and health standards.

### Safety Compact

The Safety Compact, part of the governor's Safety Begins With Me initiative, got underway in 1990. During the year, the bureau hired a Planning & Research Associate and an Assistant Director of the Safety Division. The intent of the Safety Compact is to offer services of the Bureau to employers in high hazard industries who may be too small to have their own safety staff. Industries with high lost workday case incidence rates--identified by the end statistics of the Annual Survey of Occupational Injuries and Illnesses--were selected. Within that group, employers with 20 to 99 employees were invited to join the Compact.

An informational meeting was held in September, 1990. Eighteen companies agreed to participate in the initial phase of

## Introduction

This section describes the Workers' Compensation Commission's data collection activities and operations. It also evaluates certain aspects of the overall workers' compensation system.

## Overview of the Maine Workers' Compensation Commission

The Commission resolves disputes for individual claims. A dozen or so cases per year, are reviewed by the Supreme Judicial Court to address special issues of statutory interpretation. With this exception, the Commission, not the court system, is responsible for resolving disputes. The agency holds initial informal conferences to try to take care of problems without litigation, conducts a formal hearing system similar to a court, and conducts an appellate process. Like Judges, Workers' Compensation Commissioners are appointed by the Governor and confirmed by the Joint Standing Committee on Judiciary.

Formal dispute resolution was the agency's sole mission before 1980. Then, a series of legislative reforms expanded its duties. In 1981, an Appellate Division was created within the Commission. In 1983, an informal conference process was created to attempt to resolve problems without litigation. In 1985, the Office of Employment Rehabilitation and the Abuse Investigation Unit were added. Adjudication remains the most important responsibility in terms of the agency's effect on injured workers, employers and insurance carriers. However, the Commission also oversees rehabilitation activity, investigates abuse, and monitors individual cases.

Agency size increased dramatically during the 1980's. In 1983, the staff numbered 36 and worked in a central Augusta office. Commissioners traveled throughout the state, moving from one hearing location to the next. Today, the Commission has a central office in Augusta and five regional offices. Before the hiring freeze in 1989, the staff numbered nearly 120. Hearings, informal conferences, vocational rehabilitation conferences and other activities occur mainly in regional offices. The central Augusta office is administrative. Some hearings continue to be held at distant locations for the convenience of the affected workers.

## Statutory Mandate

Title 39 M.R.S.A. §92 details many of the responsibilities of the Commission, including adjudication, the Office of Employee Assistants, Office of Employment Rehabilitation and the Abuse Investigation Unit.

Section 93, Part 6 mandates that the Commission take an active role in the administration of the Act and that the Commis-

sion monitor individual cases to ensure that workers receive the full amount of compensation to which they are entitled.

Sections 94-A and 106-A mandate that the Commission provide an explanation of the compensation system to the worker after a First Report is filed.

Section 94-B mandates that the Commission assist workers in preparing for informal conferences.

Sections 96-105 define many aspects of the formal litigation procedure.

Sections 81-90 define many aspects of the rehabilitation oversight process.

#### Description of Data Collection Activities and Operations

##### Initial Injury Reports

A First Report of Injury or Disease is filed with the Commission if an accident requires medical treatment by a physician or one or more days of work is missed. This contains the names and address of the affected worker, the employer, the insurance carrier, a description of the incident, date of incapacity and other information necessary for processing a claim.

Information from the First Report is electronically stored and used by both the Workers' Compensation Commission and the Bureau of Labor Standards, Research and Statistics Division. The Workers' Compensation Commission uses the information to identify insurance coverage and to send a brief, informational letter to the injured worker verifying the first report. The Research and Statistics Division codes accident information from the First Reports and is the primary source of accident and safety analysis.

##### Non-Disputed Payments Data

Initial payment information is reported to the Commission on a Memorandum of Payment form. To verify correct payment, this preliminary information is later checked against another form which establishes the workers' average weekly wage. This information is electronically recorded.

A discontinuance is filed by the carrier/employer when the affected employee returns to work. This reports total cost and the date the period of incapacity ended. On long term cases, interim reports are made at six-month intervals. This data is also electronically stored.

Filing compliance problems and related concerns about the accuracy of financial data have prevented the Commission from becoming a reliable source of information as to system cost. These payment documents do not support Commission operations or the operations of the carrier or employer. The Commission, therefore, has no direct method to identify missing data or inaccurate information. Resource constraints have prevented the Commission from developing audit procedures.

#### Informal Conferences Data

If the carrier or employer does not believe the injury or illness is work-related or that they are not liable for some other reason, then the claim may be challenged. The first step is to file a Notice of Controversy (NOC). This form, which lists the reason for the dispute, triggers the informal conference process. Occasionally, petitions are also routed through an informal conference. Data from the NOC is electronically stored and Commission staff use it to schedule informal conferences by computer. The outcome of each NOC, including the date of informal conference, if any, is electronically stored. Computer programs use this data to track cases through the informal system and prevent cases from becoming lost.

#### Formal Hearing Data

If the problem is not worked out at the informal conference, one of the parties may file a petition to initiate formal litigation. The case is then tried in front of a Commissioner, who is the fact-finder for workers' compensation cases.

The Commission has maintained petition filings and dispositions data electronically since 1987. This is used to keep track of formal petitions that needed to be scheduled, tabulate the number of pending petitions per Commissioner and, particularly, to focus attention on petitions undecided two years after the filing date.

This data is also used to generate a monthly docket and disposition summary. These are compiled every three months into a quarterly report to the Governor, the Speaker of the House, and the President of the Senate. This report, which is statutorily mandated, summarizes the individual commissioner's case load and progress.

1990 is the first year that the Commission has been able to store a year of filing and disposition data electronically. This will enable us to study litigation trends more effectively than has been possible to date. In addition, it is a step towards developing more extensive computer support for litigation activities.

### Appellate Data

If a litigant believes that the hearing level Commissioner has made an error of legal analysis, an appeal may be made. The hearing level Commissioner's legal reasoning is evaluated by a panel of 2-3 Commissioners. These panel decisions may be appealed to the Supreme Judicial Court. However, the court has discretion on whether to accept the case for review. Data as to the number of appeals, dispositions, and types of disposition are maintained manually.

### Rehabilitation

The Commission's Office of Employment Rehabilitation regulates the development and implementation of rehabilitation plans for injured workers with long term disabilities. During 1987, 1988, and part of 1989, the Commission maintained its vocational rehabilitation data on a personal computer. In mid-1989, this was transferred to a small mainframe. Most data is now used to support operations. An electronic record now exists to record filings with the Office of Employment Rehabilitation and the costs and outcomes of plans.

### Summary of Operations and Data

#### Processing First Reports of Injury

Most First Reports are for medical-only injuries. As may be seen in the following table, the total number of First Reports has increased dramatically during the last few years. We believe this may be attributable to medical only First Reports being reported more consistently now than in the past. The number of disabling injuries and illnesses, where one or more days of work is lost has grown more slowly and more in line with employment.

<u>Year</u>	<u>Total First Reports</u>	<u>Disabling Cases*</u>	<u>Average Employment</u>
1980	51,531	19,846	418,300
1981	50,712	19,810	419,200
1982	47,188	18,212	415,500
1983	49,214	19,140	425,000
1984	63,838	23,620**	445,700
1985	64,033	23,296	459,100
1986	67,872	24,336	477,400
1987	75,326	25,528	502,600
1988	78,958	26,431	527,500
1989	80,349	26,006	546,120

\* A disabling case is defined as an injury or illness resulting in one or more days away from work.

\*\* Estimate

### Dispute Resolution - Informal Conferences

Utilization of the informal conference system has increased substantially since 1984, when the legislation became effective. The following chart has been revised from last year to reflect an actual filing date rather than date processed by the Workers' Compensation Commission.

<u>Year</u>	<u>Filings for Informal Conference</u>	<u>Informal Conferences Held</u>
1986	11,553	4,973
1987	15,286	6,737
1988	16,787	6,575
1989	19,944	7,204
1990	21,852*	7,724*

\*preliminary

There are two major reasons for the growth of filings and conferences. First, the number of years covered by the early pay system has increased, therefore, the number of cases eligible for informal conference is larger. Disputes in a current year are a cumulative product of injuries occurring in that year and those from prior years which are now in controversy.

### Distribution of Informal Conference Findings Filed in 1990 by the Year of Injury

<u>Year of Injury</u>	<u>Filings for Informal Conference</u>	<u>Percent</u>
1984	502	2.3%
1985	705	3.2%
1986	983	4.5%
1987	1,510	6.9%
1988	2,227	10.2%
1989	4,781	21.9%
1990	<u>11,144</u>	<u>51.0%</u>
	21,852	100.0%

The second major cause is the increase in employment. Growth in the number of disputes going through the system would be expected to occur for the first five years or so even if employment levels remained constant. However, this action has been accelerated because employment levels began to rise dramatically at about the time the early pay system was implemented.

Conferences are held for about 40 percent of filings. Many conferences are canceled because the underlying problem was simple enough to be taken care of by the parties prior to the conference date. Alternatively, the conference is waived in some cases because the underlying problem is too complex to resolve without litigation. Some NOC's are filed even if there is no problem and there is no reason for a conference. These are often called "protective" NOC's. Failure to file a Notice of Controversy within 44 days of a claim may lead to a default, i.e. the carrier or employer being legally presumed to have accepted compensability. Hence, a NOC may be filed simply to avert this possibility.

The statutory requirement for scheduling an informal conference is within 21 days from the date when the Notice of Controversy is filed. The Commission has never been able to conform to this deadline. From 1986 through 1990 an average of 50 days passed between the filing of a Notice of Controversy and the date of an informal conference.

We have attempted to evaluate the effectiveness of the informal conference system in resolving disputed claims. We found no statistical evidence to suggest that informal conferences reduce litigation. However, we did find evidence that informal conferences seem to help resolve minor claim problems.

#### Dispute Resolutions - Formal Hearings

##### Volume of Filings

The number of petitions filed annually has grown markedly.

This we believe is a direct result of underlying employment growth during the decade.

<u>Year</u>	<u>Annual Petitions</u>
1980	5,308
1981	5,796
1982	5,940
1983	7,360
1984	5,968
1985	5,919
1986	7,471
1987	8,140
1988	11,036
1989	12,899
1990	14,555

Litigation relates to incidents occurring in several previous years. The cumulative effect of increased employment during

these prior years is that there is more litigation today than ever before.

Litigated cases is less than total petitions, as more than one petition may be filed per dispute. For example, the 14,555 petitions from 1990 reflects about ten thousand litigated cases. Approximately 1.4 petitions are filed per case.

Since 1988, the Commission has been experimenting with statistical techniques to forecast the number of petitions to be filed in the next year. This year we are forecasting 15,932 petitions to be filed in 1991.

We believe the number of petitions filed annually will continue to increase at least until the middle of the 1990's. We are hopeful of seeing a slowdown during 1992 or 1993, reflecting the current recession. Maine, however, will not again see litigation levels of the early 1980's, where approximately 6,000 petitions were filed annually, unless an economic catastrophe occurs and employment levels drop by roughly 100,000 jobs.

#### Volume of Pending Litigation

In early 1987, the Commission inaugurated a small, computerized tracking system for petitions. At that time, the Commission discovered that the total number of pending petitions was about 7,500 statewide. That level of backlog held through 1988 despite a significant increase in petition filings. Backlog increased to 8,194 in 1989. However, the number of cases which had been undecided for more than two years decreased. In 1990, the number of pending undecided petitions increased to the 10,000 level. On the other hand, petitions undecided more than two years were reduced to 221, the lowest since records were first kept in mid-1986.

<u>Year</u>	<u>Total Pending</u>	<u>Pending 2 or More Years</u>
1986	7,499	492
1987	7,461	NA
1988	7,303	465
1989	8,194	287
1990	10,026	221

#### Speed of Adjudication

Litigation of a petition to a full decision continues to average about a year. The median is slightly less, about 9 months. This figure is in line with other states and is faster than the courts for cases of comparable value and complexity. States with more rapid hearing timelines for workers' compensation often involve situations where the agency's administrative ruling may be followed by a full trial in district court.



Therefore, it is in court, not the state workers' compensation agency, where litigation occurs.

### Appellate Cases

The volume of Appellate cases has also been increasing. A manual system is in place to monitor delay and the current backlog of pending cases is less than the number of annual filings.

### Appellate Filings and Dispositions

	Appeals Filed	Decisions & Dismissals	Decisions	Dismissals
1984	284	249	162	87
1985	399	294	200	94
1986	322	318	211	107
1987	319	239	153	86
1988	367	369	254	115
1989	442	364	234	130
1990	480	369	242	127

Appellate Backlog as of January 8, 1991 was 408

Commissioner panels affirm the legal analysis of the hearing Commissioner in roughly 70-80% of cases. The Supreme Court affirms Commissioner panels in about the same percentage.

### Percent Commissioner Affirmed By Appellate Panel

### Percent Appellate Panel Af- firmed by Supreme Court

	Decisions	Percent Affirmed		Law Court Review	Percent Affirmed
1984	162	73%	1984	8	62%
1985	200	65%	1985	8	62%
1986	211	70%	1986	4	100%
1987	153	79%	1987	8	75%
1988	254	78%	1988	14	57%
1989	234	75%	1989	8	75%
1990	242	77%	1990	10	80%

## System Status

### Litigiousness

The question of how much litigation is appropriate is obviously subject to differing opinions. Some believe that any litigation at all indicates a system problem. Others believe that most injured workers need attorneys in order to obtain their statutory benefits. Policy discussions have been hindered because data beyond a simple count of filings and dispositions has not been available.

This year we are including, for the first time, a section analyzing litigation. 1990 is the first year that the Commission has had a complete year of litigation data stored electronically. We anticipate this section will become more sophisticated as additional years of data become available.

The distribution of petitions filed in 1990 by the underlying year of injury follows. This displays the degree to which petitions filed in a calendar year relate to injuries occurring in several prior years.

<u>Year of Injury</u>	<u># Petitions Filed in 1990</u>	<u>Percent</u>
1980	159	1.0%
1981	223	1.4%
1982	300	1.9%
1983	438	2.7%
1984	658	4.1%
1985	831	5.2%
1986	1,320	8.3%
1987	1,941	12.1%
1988	2,941	18.4%
1989	4,804	30.0%
1990	<u>2,385</u>	<u>14.9%</u>
	16,000*	100.0%

\*Includes 1990 Petitions Processed in January and February 1991.

As may be seen, injuries occurring in 1990 accounted for about 15% of petitions filed. Injuries from prior years were the primary source of litigation in 1990. The above table is our first enumeration of the distribution of petitions filed in a calendar year and, hence, must be considered preliminary. This distribution indicates that petitions filed in 1990 relate to injuries occurring over a roughly 7 year time span, covering record years of employment. We anticipate that the volume of petitions filed in 1991 will continue at a high level because petitions filed in 1991 will also come from several injury years with high employment levels.

This lag effect makes it difficult to determine whether a higher or lower percentage of injuries occurring in just one year are entering litigation. We are attempting to develop litigation rates based on the underlying year of injury. If we are successful, over time such a measurement will enable us to evaluate whether a higher or lower percentage of cases are entering litigation.

Our preliminary estimate is derived as follows. It is common for more than one petition to be filed on a litigated case. However, a type of petition known as a petition for award, in most cases indicates a dispute about the basic compensability of an injury and in most cases, at this stage only one would be filed per case.

As of February 28, 1991 the Commission had received 1,240 petitions for award on 1990 injuries. We had also received 15,977 records of first indemnity payments. Both figures will grow over time. By division (1,240/15,977) we get an initial litigation rate of 8%. This method is preliminary and will need development over roughly a 7 year period. Unanswered, at present, is how much additional litigation will ensue on petitions for review and restoration. Also unanswered is how much litigation is centered in a core group of extremely contentious cases.

#### Benefit Structure

An influential study entitled The Report of the National Commission on State Workers' Compensation Laws issued in 1973 contained certain recommendations which have become commonly accepted benchmarks. Since adequacy of benefits is ultimately a political determination, these recommendations were expressed as a minimum standard rather than as an ideal benefit structure.

Benefits for total disability were recommended to be at least two-thirds of the affected workers' average weekly wage. Total disability benefits were recommended to be paid for the duration of the disability or for life, if the disability was permanent. The waiting period recommended was to be no more than three days. The maximum weekly benefit to be at least 200 percent of average weekly wage. An additional suggestion was that compensation for partial disability be a combination of separate benefits for impairment and for disability.

Maine's statute on total incapacity follows these recommendations except in the area of the maximum weekly benefit. The current maximum weekly benefit is 137 percent of state average weekly wage. Maine's statute on partial benefits also follows the suggestion of the National Commission.

### Timeliness of Benefits

The Workers' Compensation Commission has developed a computer program which calculates the number of days from the date of incapacity to the date of first payment for wage loss cases. By way of comparison, the Commission performed a similar analysis on a sample of 1983 cases during the summer of 1989. The results for 1983, 1986, 1987, and 1989 are displayed on the following table.

<u>Year of First Payment</u>	<u>Percent Paid 1-14 Days</u>	<u>Percent Paid 15-21 Days</u>	<u>Percent Paid 21-28 Days</u>	<u>Percent Paid 28+ Days</u>
1983	16	10	6	68
1986	45	17	10	28
1987	41	20	12	27
1988	35	19	12	34
1989	36	21	12	31

The improvement in the timeliness of first benefit payments in recent years as compared to 1983 is largely attributable to the early pay legislation which became effective in 1984. However, current timelines do not conform to the statutory mandate that payment for wage loss be made or the case controverted within 14 days.

In 1988, the Commission was contemplating a computer supported process for monitoring payment timeliness on individual cases and working with insurers and adjustment companies to improve timeliness. This project has been placed on hold due to resource constraints.

Additionally, complaints have been raised regarding delay in making payments following a Commission decision. In the past, this has been anecdotal and no data was available as to the nature and extent of the problem. During the 1987 emergency session, the penalties provision of the statute was strengthened. During 1990, the Commission received 417 complaints and collected fines totaling \$144,882.

### System Costs

The effect of the cut in benefits during late 1987 has not yet been evaluated, although anecdotal evidence is growing that the cost of partial cases has been greatly reduced. During the 1987 emergency session, the cost of partial disability cases was a central issue. It was argued that a significant percentage of system costs under the then existing benefit structure was related to permanent partial cases, where the affected worker has lost some, but not all, of their earning capacity as a result of work-related injury or illness.

The example originally presented to the Second Special Session of 1987 estimated the potential benefits to a worker making the state average weekly wage (\$310.87) with a 50 percent loss of earnings capacity. Taking into account the then existing inflation adjustment and the lack of a durational limit, the cost of such a case was projected to be \$912,000. The amended benefit structure placed a 400 week durational limit and eliminated the inflation adjustment. Under the new structure, the cost of this hypothetical case would be  $\$310.87 \times \frac{2}{3} \times 400$  or \$41,500. Adding an additional year of total disability covering the hearing period will give a reasonable estimate of the total cost of such a case. The total disability benefit would be  $\$310.87 \times \frac{2}{3} \times 52$  or \$10,777. So, the estimated total cost of such a case would be \$41,500 plus \$10,777 or \$52,277.

While the benefit cut from \$912,000 to \$52,277 is significant, it will take a few years for this change to be fully reflected in statewide costs. If the argument that these partial cases are a large percent of a total system costs is correct, then Maine should experience a clear reduction in its projected costs of partial weekly benefits. Based on anecdotes, we suspect this is occurring and that costs are being reduced relative to the past. However, given its industrial mix, it is unlikely that Maine will ever be an inexpensive state.

By way of interstate comparison, the Commission receives an annual publication from the National Foundation for Unemployment and Workers' Compensation Insurance summarizing fiscal data for state workers' compensation systems. Aggregation of data is slow and 1987 is the most recent year available.

Interstate Costs  
1987  
Benefit Cost Rate\*  
Highest 5 States

<u>State</u>	<u>1987</u>
Montana	3.77%
W. Virginia	3.71%
Maine	3.38%
Louisiana	2.91%
Oregon	2.79%
U.S. Average	1.40%

\*Total indemnity and medical payments as a percentage of estimated total wages of workers' covered by state workers' compensation programs

- Source: National Foundation for Unemployment Compensation and Workers' Compensation

States with high benefit cost rates also tend to rank high in OSHA incidence rates of occupational injuries and illnesses. In 1987 4 of the highest 5 cost states were also in the top 5 for the OSHA lost workday case rate. As may be seen, Maine ranks third in its benefit cost rate and first on the OSHA lost workday case rate.

Interstate Safety  
1987  
OSHA Lost Workday Incidence Rate\*  
Highest 5 States

<u>State</u>	<u>1987</u>
Maine	154.8
Rhode Island	137.3
Oregon	123.8
W. Virginia	104.3
Louisiana	90.6
U.S. Average	69.9

\* Lost workdays per 100 employees per year (working 40 hours weekly, 50 weeks per year)

Source: Occupational Injuries and Illnesses in Maine 1988, Bureau of Labor Standards

### Evaluation Perspective of Workers' Compensation Commission

Many states have been confronted by workers' compensation problems in the past few years. This trend seems to have had a more severe impact in Maine than elsewhere. Our economy includes a preponderance of hazardous employment. Our incidence rates, as measured by the OSHA standards are the highest in the nation, more than twice the national average. Workers' compensation expense per employee is also high. Again, more than twice the national average. These costs make workers' compensation a chronic legislative issue.

Public dissatisfaction exists on both sides. Employers complain that insurance premiums are excessive and unrelated to business safety records. Workers in the system often feel they are unprotected from abuse by carriers and employers. Carriers and employers feel they are unable to have people removed from compensation benefits fast enough and that, in some cases, undeserving individuals receive benefits. All parties feel the system is difficult to understand.

The performance of carriers and adjusting companies is another source of concern. Timely payment is not being made on a significant number of routine indemnity cases. A little over 400 complaints per year that were made in 1989 and 1990 that payments were not promptly made, even after a Commission decree. The informal conference process is too often used as an investigative tool rather than as a process to resolve the actual dispute. Employer complaints as to the adequacy of claims investigation seem to be increasing.

Although there will always be situations where problems develop, the current level of late payment and delayed adjustment reflects a statewide difficulty in claims processing. To a significant degree, the Commission believes these problems reflect an underlying instability in the benefit financing mechanism. Until this is corrected, the Commission sees little opportunity to address these problems through administrative action.

As in last year's report, the Commission continues to see opportunities to improve the efficiency of the dispute resolution process at both the formal and informal level. This opportunity has been severely tempered by the increase in petition filings and by resource constraints.